

Brief Of Amici Curiae CATO Institute, Professors Jonathan H. Adler, Roederick M. Hills, Jr., James Huffman, Daniel A. Lyons, Andrew P. Morriss, Nathan A. Sales, And David Schoenbrod In Support Of Petitioners

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Should federal agencies be allowed to determine the limits of their own authority, or are the courts responsible for ensuring that agencies do not exceed the authority given to them by Congress? This important question is squarely before the Supreme Court in *City of Arlington v. FCC*. While courts are normally responsible for interpreting federal statutes, special rules apply when those statutes involve administrative agencies. The Supreme Court ruled, in the case of *Chevron v. NRDC*, that administrative agencies are entitled to a certain amount of deference when they interpret statutes they are charged with enforcing. Thus, as long as Congress has not clearly spoken on the issue itself, and as long as the agency's interpretation of the relevant statute is reasonable, courts will defer to the agency and enforce the agency's interpretation even where the courts might have adopted a different version. In *United States v. Mead*, the Supreme Court explained why such broad deference is given to these agencies: If statutory ambiguities exist this is because Congress delegated the authority to resolve those ambiguities to the agency charged with enforcing the statute. Thus far, however, the Court has not said whether agencies should be granted similar deference when determining their own jurisdictions. In 2009, the Federal Communications Commission asserted the authority to promulgate certain regulations affecting state and local land-use decisions regarding cell-phone infrastructure. When challenged by a number of local governments, including Arlington, Texas, the FCC argued that, even if the relevant statute did not clearly give the FCC authority to make these regulations, the court ought to defer to the FCC when determining whether the FCC has jurisdiction. The Court of Appeals for the Fifth Circuit summarily agreed with the FCC and allowed the FCC to determine the scope of its own authority. The Cato Institute, along with a number of prominent

administrative law professors, have filed a brief in support of the City of Arlington. First, we point out that the rule advocated by the FCC is simply inconsistent with Supreme Court precedent on the issue. We then argue that the Court's justification for granting deference to an agency's interpretation of its own statute does not apply to Congress's grant of jurisdiction to an agency. Since the theory of deference is based on Congress's affirmative grant of power to an agency over a defined jurisdiction, it makes little sense to say that the failure to provide such an affirmative grant of power is an equal justification for deference. Furthermore, we argue that granting an agency deference over its own jurisdiction is an open invitation for agencies to aggrandize power that Congress never intended them to have. Finally, we note that our argument does not prevent Congress from vesting such authority in an agency if it chooses to, but instead forces Congress to make a clear decision about whether to vest such power. This ensures that important decisions about the scope of agency power are made by politically accountable representatives in Congress, not by agencies that are far less accountable to the voters. Thus, we ask that the Supreme Court reverse the Fifth Circuit's decision and remand the case for further consideration consistent with the principles laid out in our brief.

Please see full brief below for more information.